

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 8

[CG Docket No. 22–2; FCC 22–86; FR ID 116786]

### Empowering Broadband Consumers Through Transparency

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on additional proposals to implement the Infrastructure Investment and Jobs Act (Infrastructure Act). Specifically, the Commission seeks comment on refining broadband consumer labels to include more comprehensive information on pricing, bundled plans, label accessibility, performance characteristics, service reliability, cybersecurity, network management and privacy issues, the availability of labels in multiple languages, and whether the labels should be interactive or otherwise formatted differently so the information contained in them is clearer and conveyed more effectively.

**DATES:** Comments are due on or before January 17, 2023, and reply comments are due on or before February 14, 2023.

**ADDRESSES:** Interested parties may submit comments, identified by CG Docket No. 22–2, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://apps.fcc.gov/ecfs>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20–304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

**FOR FURTHER INFORMATION CONTACT:** Erica H. McMahon of the Consumer and Governmental Affairs Bureau at (202) 418–0346 or [Erica.McMahon@fcc.gov](mailto:Erica.McMahon@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), in CG Docket No. 22–2, FCC 22–86, adopted on November 14, 2022 and released on November 17, 2022.

The full text of the document is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

### Initial Paperwork Reduction Act of 1995 Analysis

The FNPRM proposes rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104–13; 44 U.S.C. 3501–3520. In

addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

### Synopsis

1. In 2021, the President signed into law the Infrastructure Act, which, in relevant part, directs the Commission “[n]ot later than 1 year after the date of enactment of th[e] Act, to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.” See Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, section 60504(a) (2021) (Infrastructure Act).

2. In a Report and Order released on November 17, 2022 (FCC 22–86) (*Broadband Label Order*), and published elsewhere in this issue of the **Federal Register**, the Commission adopted a new broadband label to help consumers comparison shop among broadband services, thereby implementing section 60504 of the Infrastructure Act. Specifically, the Commission required broadband internet service providers (ISPs or providers) to display, at the point of sale, a broadband consumer label containing critical information about the provider's service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and whether the provider participates in the Affordable Connectivity Program (ACP). The Commission required that ISPs display the label for each stand-alone broadband internet access service they currently offer for purchase, and that the label link to other important information such as network management practices, privacy policies, and other educational materials.

3. In the proceeding, commenters offered certain suggestions for the labels that were not adopted because the record requires additional development on such issues. The Commission therefore seeks further comment in this FNPRM on issues related to accessibility and languages, performance characteristics, service reliability, cybersecurity, network management and privacy, formatting, and whether ISPs should submit label information to the Commission.

### A. Accessibility and Languages

4. In the *Broadband Label Order*, the Commission explained that all consumers, including those with disabilities, need broadband service for access to emergency services, telehealth services, and video conferencing, as well as to news and entertainment. Several commenters suggested additional ways to improve accessibility of the broadband label. For example, the American Council of the Blind proposed that video relay service and video calling service be made available to provide customer service in American Sign Language for broadband labelling information, irrespective of whether the broadband label information is provided in hard copy or digitally. The City of New York proposed that the Commission require Braille or a Quick Response (QR) code with a tactile indicator for blind or visually impaired consumers.

5. In the *Broadband Label Order*, the Commission required ISPs to post information on their websites in an accessible format, and the Commission strongly encouraged them to use the most current version of the Web Content Accessibility Guidelines (WCAG). See WC3 Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.1, <https://www.w3.org/TR/WCAG21/>. The Commission did not specify which WCAG sections would be relevant to the broadband label in the *Broadband Label Order*. The Commission seeks comment on whether to adopt specific criteria, based on the WCAG standard. For example, the WCAG 2.1 suggests providing text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, Braille, speech, symbols, or simpler language. The WCAG also suggests providing definitions of words or phrases used in an unusual or restricted way, including idioms and jargon and abbreviations. The Commission seeks comment on whether to mandate specific WCAG suggestions for the broadband label. Commenters should cite to the specific WCAG sections they propose the Commission adopt.

6. In the *Broadband Label Order*, the Commission required ISPs to make the labels available in English and any other languages in which they market their services in the United States. The Commission seeks further comment on whether ISPs should be required to make the label available in languages other than those in which they market their services, such as Spanish, Simplified Chinese, Traditional Chinese, Korean, Vietnamese, and

Tagalog. Should ISPs base the languages available on the consumer or network location? For example, should a provider offering services in an area with a significant Spanish-speaking population be required to provide a label in Spanish even if it does not provide its marketing materials in Spanish, while a provider serving a region with a significant Vietnamese population be required to provide the label in Vietnamese? Should the languages available comport with the Census Bureau's American Community Survey data or another identifiable metric? Should providers be required to translate their labels into other languages upon the request of any consumer considering purchase of the provider's service? Or would providing information on the Commission's planned glossary web page in additional languages, including translated label templates, resolve any language barrier problems? What are the burdens, if any, associated with requiring providers to make the label available in languages in which they do not market their services?

### B. Price Information

7. In the *Broadband Label Order*, the Commission adopted a requirement that labels display the base monthly "retail" price for standalone broadband, *i.e.*, the price a provider offers broadband to consumers before applying any discounts such as those for paperless billing, autopay, or any other discounts, along with one-time and recurring monthly fees. The Commission did not require providers to display additional information that affects the bottom line price consumers pay each month, such as discounts for paperless billing and for bundling broadband with other services. The Commission seeks comment on whether to require providers to display these discounts and other variables (such as location-specific taxes) in future versions of the label. Should such a requirement include all potential discounts and other price variables, or just those that reflect most consumer purchases or providers' most popular packages? If the Commission were to adopt a more comprehensive set of labels, how can it best ensure that additional point-of-sale labels do not overwhelm consumers with too much information, thus rendering comparison shopping too difficult for the average consumer?

8. The Commission seeks specific comment on pricing information for bundles. Would a label requirement for bundled services, with a single price for the entire bundle, help consumers? Do so many consumers purchase broadband in a bundle that requiring labels for

bundles makes sense? If the Commission were to adopt such a requirement, would the Commission need to define "bundled services" for these purposes? If yes, the Commission proposes to use the definition that the Commission adopted for purposes of the *ACP Data Collection Order* (FCC 22–87) and seeks comment on that approach. See *Affordable Connectivity Program*, WC Docket No. 21–450, Fourth Report and Order and Further Notice of Proposed Rulemaking (FCC 22–87), adopted on November 15, 2022 and released on November 23, 2022. Are there any specific services that should be included or excluded from such a requirement? The Commission seeks comment on these and any other issues relevant to bundled services.

### C. Performance Information

9. *Speed*. Broadband speed is measured in megabits per second, or Mbps; generally, the higher the speed, the faster a user can download and upload files and stream videos. In the *Broadband Label Order*, the Commission adopted a typical usage measurement requirement, explaining that, at a minimum, ISPs must list on the label the typical download and upload speeds for fixed and mobile broadband services. The Commission also noted that many providers describe their mobile service offerings in standards-based and marketing terms such as LTE, 4G, 5G, 5G UC, or 5G UWB service (instead of providing the typical speeds associated with the offer).

10. The Commission recognized that the speed a customer will experience can vary depending on the consumer's equipment, how many devices are operating in the household, network congestion, network usage of nearby customers, and the distance to a cell site (for wireless broadband). Given these variables, the Commission seeks comment on whether there are more appropriate ways to measure speed and latency other than "typical" for purposes of the label disclosure such as average or peak speed and latency. Should the Commission require providers to add another speed metric to the label in addition to typical speed? As discussed in the *Broadband Label Order*, some commenters offered alternatives to typical speed measurements. The Commission seeks comment on whether any of these proposals, or another metric, would be more useful, and on any burdens on providers of implementing such proposals.

11. Commenters should discuss alternative methodologies that would be useful for consumers. As the

Commission explained in the *Broadband Label Order*, it is important that providers measure and disclose speeds consistently in order to ensure that consumers can compare options when selecting a service provider or a service offering.

12. *Reliability*. Service reliability is an additional performance measure that is extremely difficult for consumers to discern when shopping for a broadband service, yet can factor greatly into their purchase decisions. Service reliability has taken on increased importance in light of increased reliance on consumer broadband services to support telework and virtual schooling. The record in the proceeding evidenced support for providing service reliability information to consumers.

13. To what extent would adding a reliability measure to the label improve the availability of that information to consumers? How would this information assist consumers with their purchasing decisions? If the Commission required a reliability measure to be provided to consumers, how should reliability be represented on a broadband label? Would a metric such as “Network availability = XX.XX% (Y minutes unavailable per month)” be appropriate? The Commission anticipates that a metric such as this would be easily comprehensible and uniformly applicable across fixed and mobile broadband networks. In addition, it should be relatively straightforward for ISPs to measure availability in terms of the percentage of time/minutes per month that their service is “hard-down” (meaning that service quality is not simply degraded but unavailable) and is likely already captured at peering points. The Commission seeks comment on this metric, as well as on any alternatives that would be easy for consumers to understand and compare when shopping for broadband service. If this metric is adopted, how should it be calculated to ensure that it can be compared across service providers? For example, would a reliability metric need to be expressed in a way that is specific to a geographic area or specific to certain networks within a service package? Should calculation of a reliability metric account for conditions that might be considered as outside of the provider’s control (e.g., customer power outages, mobile devices outside of the service provider’s geographic coverage area with/out roaming), and if so, how should it account for them?

14. Would including the FCC SpeedTest app through a link on the label assist consumers in determining whether “they are getting what they

paid for” (i.e., whether their service is available in a particular instance)? Should the Commission take steps to confirm the accuracy of information on reliability, and if so, what steps should the Commission take?

15. *Cybersecurity*. Consumers may find it relevant when comparison shopping whether the broadband service that they are considering is reasonably secure. Should ISPs be required to disclose at the point of sale information about their cybersecurity practices? What standards or best practices should be used to benchmark a broadband service’s security posture? How should broadband labels describe or depict the security of a broadband service to make that information as easy as possible for consumers to understand? Should broadband labels warn consumers if an ISP has left certain cyber risks unmitigated by reasonable security measures? If this information is to be made available to consumers, would including a link on the label to direct consumers to the provider’s website be sufficient?

16. *Other Service Characteristics*. The Commission seeks comment on whether there are other service characteristics, beyond speed and latency, and possibly reliability and cybersecurity, that ISPs should display on the label. For any such performance characteristics, do ISPs currently measure them and, if so, do they measure them in a reasonably uniform way? As the Commission considers additions to the label, it seeks to balance the consumer benefits against the costs to ISPs.

#### D. Network Management and Privacy

17. *Network Management Practices*. In the *Broadband Label Order*, the Commission adopted a requirement that the broadband label link to the ISP’s website for more information on network management practices, rather than including such practices in detail on the label. The Commission seeks further comment on whether a link to the network management practices is sufficient or if the label should include more specific disclosures about whether the provider engages in blocking, throttling, and paid prioritization. The Commission notes that, under the *2017 Restoring Internet Freedom Order*, 83 FR 7852 (Feb. 22, 2018), ISPs are required to disclose any blocking, throttling, affiliated prioritization, paid prioritization, or security practices in which they engage. Commenters should discuss whether these disclosures should be added to the label or whether a link to the provider’s network management practices is sufficient. Additionally, the Commission seeks

comment on whether network management practices, either in the label or linked, should be written in a way that is clear and understandable for non-technical audiences.

18. *Privacy Policies*. The Commission observed in the *Broadband Label Order* that several commenters discuss issues related to privacy, such as whether an ISP discloses consumer data to third parties and whether ISPs collect and retain data about consumers (e.g., the websites the consumer visits). These commenters urge the Commission to add certain privacy elements to the new label, such as disclosures about user data collection, retention, and tracking. Other commenters argue that, due to the limitations on the amount of information that may be included in a concise label, expansive privacy disclosures on a label are impractical.

19. The Commission seeks comment on whether to continue to include a link to the service provider’s current privacy policy in the label instead of including any detailed privacy information in the label itself. Commenters should discuss whether the Commission should require providers to affirmatively state, in addition to providing their privacy policy, whether the provider collects or uses consumer data for reasons other than providing broadband service, and if this is shared with third parties.

#### E. Format Issues

20. *Interactive Labels and Drop-Down Menus*. The broadband label the Commission adopted does not include interactive options or expanded labels with additional information. Consumers may, however, find an interactive label helpful. For example, customers may be able to input their household internet activity and see additional information that would estimate their internet experience under each plan. Alternatively, interactive labels can also be used to reveal additional information that may be important to a small subset of consumers but might be confusing to the average consumer. The Commission seeks comment on whether to require ISPs to provide additional information in an interactive label.

21. An interactive label could also include an “expand” option that would provide more detailed information on specific categories of information, such as pricing. For example, such a tool could provide monthly pricing totals for the options a consumer selects. Alternatively, ISPs could provide this additional information in a chart or table on their websites to assist consumers in determining what services will best meet their needs. Further, the Commission seeks comment on how to

provide this same information in dissimilar sales contexts such as in-store and over-the-phone settings. Commenters should discuss these options and any burdens associated with implementing these proposals. Commenters should also address how proposed interactive labels must be machine readable as well as accessible and translated in languages other than those in which they market their services.

22. *Focus Groups and Surveys.* The Commission notes that, in both initially drafting and then updating its fuel economy labels, the United States Environmental Protection Agency (EPA) used consumer feedback from surveys and focus groups. The Commission seeks comment on whether it would be useful for the Commission to similarly employ focus groups, surveys, or subject-matter experts to provide feedback on future refinements to the broadband labels.

23. *Style Guides and Implementation Tools.* The broadband label the Commission adopted is a tool for comparison shopping and works best when it is standardized across the industry. The record in the proceeding shows that other federal agencies, namely the EPA and United States Food and Drug Administration (FDA), have published compliance tools for entities that must comply with their fuel economy and nutrition labels. For example, the FDA published a style guide showcasing how a label should appear in various settings; it included an annotated template that assisted a product's design team with the creation of the label. Everything from font size, kerning, line width, and color was explained in detail. The Commission seeks comment on whether a similar set of tools would be appropriate to ease the burden on providers of creating labels and to enhance consistency in the marketplace, or whether having templates in the form of fillable PDFs on the Commission's website serves that purpose. If an additional style guide would be helpful, the Commission seeks comment on what should be included in it, with particular attention to accessibility concerns and point-of-sale scenarios both online and in retail storefront situations.

#### F. Labels Submitted to the Commission

24. In the *Broadband Label Order*, the Commission required ISPs to provide broadband labels at the point of sale and to archive their labels for two years. Several commenters proposed that the Commission give ISPs the option of submitting labels directly to the Commission instead. The Commission

seeks comment on whether it should allow ISPs to do so and whether it should maintain a database of labels and post them on the Commission's website. Alternatively, should the Commission allow providers to seek a hardship waiver from the requirement to display labels on their websites, and only if such waiver is granted, permit them to submit their labels to the Commission? In either case, how long should the labels remain on the Commission's website? Commenters should discuss whether the entire label should be submitted to the Commission or whether only the data disclosed in the label, such as the pricing information and typical speeds, should be provided to the Commission in spreadsheet form. In addition, commenters should address any burdens on ISPs of providing labels to the Commission, and any concerns about the possible burdens on consumers with this proposed approach.

#### Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided.

##### A. Need for, and Objectives of, the Proposed Rules

26. In the *Broadband Label Order*, the Commission required broadband internet service providers (ISPs or providers) to provide, at the point of sale, labels for fixed and mobile broadband services that contain information about prices, introductory rates, data allowances, and broadband speeds, and to provide links to other information about broadband services on their websites.

27. In the *FNPRM*, the Commission seeks comment on additional issues based on commenters' feedback and suggestions in response to the *Empowering Broadband Consumers Through Transparency NPRM*, 87 FR 6827 (Feb. 7, 2022). Specifically, the *FNPRM* seeks comment on issues related to: (i) accessibility and languages, (ii) performance characteristics, including reliability and cybersecurity; (iii) network management and privacy, (iv) formatting, and (v) whether ISPs should submit label information to the Commission.

28. In order to improve and enhance accessibility for people with disabilities, the *FNPRM* seeks comment on whether the Commission should require broadband label information to be provided in Braille, large print, audibly, and in American Sign Language, as well as other formats. The *FNPRM* seeks comment on whether the Commission should adopt specific criteria, based on the Web Content Accessibility Guidelines (WCAG), section 2.1. This section suggests providing text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, braille, speech, symbols or simpler language. The WCAG also suggests providing definitions of words or phrases used in an unusual or restricted way, including idioms and jargon and abbreviations.

29. The *Broadband Label Order* required that the labels be provided in English and in other languages in which the provider markets its services. The *FNPRM* seeks comment on whether ISPs should be required to make the labels available in other languages, such as Spanish, Simplified Chinese, Traditional Chinese, Korean, Vietnamese, and Tagalog, or whether they should be required to translate the labels into other languages upon a consumer's request.

30. The *Broadband Label Order* required ISPs to disclose in the labels their typical download and upload speed measurements for each broadband service offering. The *FNPRM* seeks comment on whether the Commission should use a different metric, such as average speed, or require ISPs to disclose speeds for certain time periods. The *FNPRM* also seeks comment on additional performance characteristics that the Commission should consider requiring in the label.

31. In the *Broadband Label Order*, the Commission adopted a requirement that ISPs include a link in their broadband labels to additional information about their network management practices. In the *FNPRM*, the Commission seeks comment on whether a link to the network management practices is sufficient or if the labels should include more specific disclosures about whether the provider engages in blocking, throttling, and paid prioritization. The *FNPRM* also seeks comment on whether the Commission should continue to require that the labels contain a link to the service provider's current privacy policy or whether they should include more detailed privacy information in the label itself. The *FNPRM* also requests that commenters address whether the label should state if the provider collects or uses consumer data

for reasons other than providing broadband service, and if such information is shared with third parties.

32. In addition, the *FNPRM* seeks comment on whether the Commission should require ISPs to provide an interactive label or a drop-down menu, with more detailed information about their service offerings. The *FNPRM* also seeks comment on whether the Commission should employ focus groups, surveys, or subject experts to provide feedback on further refinements to the broadband labels. In addition, the *FNPRM* seeks comment on whether the Commission should create and post a style guide to assist providers with compliance and if so, what should be included in a style guide. The *FNPRM* also seeks comment on whether the Commission should require ISPs to provide labels for their bundled service offerings. Finally, the *FNPRM* seeks comment on whether the Commission should permit providers to submit their labels to the Commission, and whether the Commission should maintain a database of all required broadband labels, and post them on the Commission's website.

#### *B. Legal Basis*

33. The proposed rules are authorized under sections 4(i), 4(j), 13, 201(b), 254, 257, 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 163, 201(b), 254, 257, 301, 303, 316, 332, section 60504 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), and section 904 of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 (2020).

#### *C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

34. The *FNPRM* seeks comment on specific proposals to refine the broadband labels adopted in the *Broadband Label Order*. These proposals could result in additional reporting and compliance requirements for ISPs.

35. The *FNPRM* seeks comment on whether to require that broadband label information be provided in Braille, large print, audibly, and in American Sign Language, as well as other formats in order to make the labels more accessible to people with disabilities. The *FNPRM* also seeks comment on whether ISPs should be required to provide the labels in languages other than those in which they market their services, such as Spanish, Simplified Chinese, Traditional Chinese, Korean, Vietnamese, and Tagalog. In addition

the *FNPRM* seeks comment on whether to require providers to translate the labels into other languages upon a consumer's request. If additional language requirements are adopted, ISPs would be required to make the labels available in those languages.

36. The *FNPRM* seeks comment on whether there are more appropriate ways to measure speed and latency other than “typical” for purposes of the label disclosure such as average or peak speed and latency. The Commission asks whether it should require providers to add another speed metric to the label in addition to typical speed. During the proceeding, some commenters offered alternatives to typical speed measurements. The *FNPRM* seeks comment on whether any of these proposals, or another metric, would be more useful, and on any burdens on providers of implementing such proposals. In addition, in the *FNPRM*, the Commission considers requiring additional information in the label on service reliability and cybersecurity practices. If adopted, these proposals would alter the metrics ISPs would be required to report on the broadband labels and will result in alternative recordkeeping requirements.

37. In the *FNPRM*, the Commission seeks comment on whether a link to the network management practices is sufficient or if the labels should include more specific disclosures about whether the provider engages in blocking, throttling, and paid prioritization. The Commission also seeks comment on whether network management practices, either in the label or linked, should be written in a way that is clear and understandable for non-technical audiences. If the Commission adopts requirements for disclosing network management and privacy policies beyond links to the ISP's website (as is required in the *Broadband Label Order*), ISPs will be required to display additional information in the labels, resulting in alternative reporting requirements.

38. In addition, the *FNPRM* seeks comment on whether to require ISPs to provide additional information in an interactive label, which could also include an expand option that would provide more detailed information on specific categories of information, such as pricing. Alternatively, the *FNPRM* seeks comment on whether ISPs should provide this additional information in a chart or table on their websites to assist consumers in determining what services will best meet their needs. Further, the Commission seeks comment on how to provide this same information in dissimilar sales contexts such as in-store

and over-the-phone settings. If adopted, these proposals would require ISPs to comply with additional label requirements.

39. The *FNPRM* also seeks comment on whether the Commission should require ISPs to display discounts and other variables in the labels. In addition, the *FNPRM* seeks comment on whether the Commission should require ISPs to provide labels for their bundled service offerings that include broadband internet access services. If adopted, this would require ISPs to display labels in addition to the ones required for the stand-alone broadband internet access service.

40. Finally, several commenters proposed that the Commission give ISPs the option of submitting labels directly to the Commission instead of displaying them at the point of sale. The Commission seeks comment on whether to allow ISPs to do so and whether to maintain a database of labels and post them on the Commission's website. Alternatively, the Commission considers whether to allow providers to seek a hardship waiver from the requirement to display labels on their websites, and only if such waiver is granted, permit them to submit their labels to the Commission. Allowing providers to submit labels to the Commission may result in some additional reporting requirements for those providers who opt to do so.

#### *D. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

42. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the *FNPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

#### *E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

43. None.

**List of Subjects in 47 CFR Part 8**

Cable television, Common carriers, Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Radio, Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 204, 232, and 252**

[Docket DARS-2022-0029]

RIN 0750-AJ46

**Defense Federal Acquisition Regulation Supplement: Payment Instructions (DFARS Case 2017-D036)**

**AGENCY:** Defense Acquisition Regulation System, Department of Defense (DoD)

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide payment instructions for certain contracts based on the type of item acquired and the type of payment.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before February 14, 2023, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments in response to DFARS Case 2017-D036 by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “DFARS Case 2017-D036”. Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2017-D036” on any attached document.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2017-D036 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulation.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Mr. David E. Johnson, telephone 202-913-5764.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD is proposing to amend the DFARS to provide payment instructions for certain contracts based on the type of payment and item acquired. The proposed rule would require separate progress payment requests in order to segregate foreign military sales (FMS) and U.S. line items in progress payment requests. In addition, the proposed rule provides procedures for structuring progress payment requests for contracts with multiple production lots.

The proposed rule consists of clarifications that require no additional effort by large or small entities. The rule provides contracting officers and contractors clearer instruction on information to include in payment instructions and payment requests for multiple lot purchases and combined FMS/U.S. acquisitions.

**II. Discussion and Analysis**

A review of Procurement Data Standard validation results has shown that contracting officers are not consistently inserting required payment instructions into contracts. Further, the Defense Finance and Accounting Service (DFAS) reported that the payment instructions, if inserted, are often not appropriate for the given contract. Upon review, DoD found that the appropriate accounting treatment for payments can be determined by the type of payment and item acquired. In addition, DoD recognized the need to establish procedures for structuring progress payment requests for contracts with multiple production lots.

DFARS 204.7109, Contract clauses, and the clause at DFARS 252.204-7006, Billing Instructions, are being amended to change the applicability of contractor cost vouchers to cost-reimbursable, time-and-material, and labor-hour contracts. The clause applicability was revised to align with payment instruction procedures provided in DFARS Procedures, Guidance, and Information 204.7108(b)(3). DFARS 252.204-7006, Billing Instructions, clause title is also revised to “Billing Instructions-Cost Vouchers”.

The following revisions have been made to simplify the contracting officer's instructions to the payment office for progress payment funding allocations: DFARS 232.502-4-70, Additional clauses, and the new clause at 252.232-70XX, Progress Payments-Multiple Lots, provide the procedures for submitting progress payments for contracts with multiple production lots. In addition, DFARS 252.232-7002, Progress Payments for Foreign Military

Sales Acquisitions, is revised to clarify the requirement for submitting separate progress payment requests for FMS and U.S. contract line items.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items**

The proposed rule clarifies payment instructions for certain contracts based on the type of item acquired and the type of payment by amending DFARS 252.204-7006 and 252.232-7002, and adding a new clause at 252.232-70XX. DoD plans to apply all three clauses to solicitations and contracts at or below the SAT. This rule does not apply to commercial services or commercial products, including COTS items.

**IV. Expected Impact of the Rule**

Currently, payment instructions are being entered manually into DoD's payment systems due to a lack of clarity in the DFARS with regard to payment instructions. This proposed rule clarifies the payment instruction language in the DFARS. The clarifications in this proposed rule will reduce data errors and inoperability problems throughout DoD's business processes created by manual entry of payment instructions in the payment systems, as well as reducing the cost of data entry.

**V. Executive Order 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

**VI. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United